



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Douglas Leonard Ducheneaux

13 IBIA 169 (05/31/1985)

Also published at 92 Interior Decisions 247

Judicial review of this case:

Reversed in part , *Ducheneaux v. Secretary of the Interior*, 645 F. Supp. 930

(D.S.D. 1986)

Reversed, 837 F.2d 340 (8th Cir. Jan 26, 1988)

Certiorari denied, 486 U.S. 1055 (1988)

Related Board case:

12 IBIA 1



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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ARLINGTON, VA 22203

## ESTATE OF DOUGLAS LEONARD DUCHENEAUX

IBIA 84-4

Decided May 31, 1985

Appeal from an order denying rehearing issued in Indian Probate IP BI 467C 80 on October 3, 1983, by Administrative Law Judge Keith L. Burrowes.

Affirmed.

1. Indian Probate: Claim Against Estate: Generally--Indian Probate: Divorce: State Court Decree: Alimony--Indian Probate: State Law: Generally

Where all relevant facts have arisen within a single jurisdiction, the law of that jurisdiction determines whether alimony or support payments required by a divorce or separate maintenance decree will survive the payor's death.

2. Indian Probate: Inventory: Property Erroneously Excluded or Included

Departmental regulations found in 43 CFR Part 4, Subpart D, suffice to allow consideration of alleged legal errors in BIA's inventory of Indian trust assets during the probate of a deceased Indian's estate.

3. Indian Probate: Resulting Trust

Resulting purchase money trusts in Indian trust land may not be claimed by persons to whom the Federal Government owes no trust responsibility.

APPEARANCES: Newell E. Krause, Esq., Mobridge, South Dakota, for appellant; Krista Clark, Esq., Eagle Butte, South Dakota, for appellees; Michael Cox, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. , at the request of the Board. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

On November 8, 1983, the Board of Indian Appeals (Board) received a notice of appeal from Marie Ducheneaux (appellant), seeking review of an October 3, 1983, order denying rehearing issued in the estate of Douglas Leonard Ducheneaux (decendent) by Administrative Law Judge Keith L. Burrowes. The order denying rehearing let stand an August 4, 1983, order approving decendent's will issued by Administrative Law Judge Garry V. Fisher. For the reasons discussed below, the Board affirms the order denying rehearing.

Background

Decendent, Allottee 3482 of the Cheyenne River Indian Reservation in South Dakota, died April 11, 1980, at the age of 65. A hearing to probate his Indian trust estate was held on July 23 and October 29, 1980, before Judge Fisher. A document executed on January 24, 1980, and alleged to be decendent's last will and testament was introduced at the hearing.

Testimony at the hearing revealed that decendent and appellant, a non-Indian, were married on February 3, 1948. Although the couple separated in 1971 and divorce proceedings were commenced, a divorce was never granted and they remained married until decendent died. The separation, however, was

complete. Court orders were entered against decedent in 1972 and 1974, as a result of which he was obligated to pay appellant \$150 per month for appellant's support.

Decedent's will expressly excluded appellant and left his entire estate to June Ellen Ducheneaux Ledbetter, CRU-7357; Lillian Lynn Ducheneaux, CRU-7456; Ria Elaine Ducheneaux Seaboy, CRU-7537; Orville Rolland Ducheneaux, CRU-7573; Larry Douglas Ducheneaux, CRU-7789; Deanna Marie Ducheneaux Mulloy, CRU-8653; and Marlene Kay Ducheneaux, CRU-9391 (appellees). Appellees are the children of decedent's half-brother, Allen Theodore (Ted) Ducheneaux.

Judge Fisher found that there was no evidence that decedent was of unsound mind or was acting under undue influence when his will was executed. Accordingly, he approved the will and ordered distribution of decedent's Indian trust estate in accordance with the will's provisions. In reaching this decision, Judge Fisher found that the court orders requiring decedent to make support payments to appellant did not create a claim against decedent's estate for continued payments after his death, and that appellant's claim of an interest in decedent's trust estate on the grounds of a resulting purchase money trust was without merit.

Appellant sought review of this decision. By order dated September 20, 1983, the Board docketed and dismissed the appeal as premature. Estate of Douglas Leonard Ducheneaux, 12 IBIA 1 (1983). Appellant thereafter filed a petition for rehearing with the Administrative Law Judge under 43 CFR 4.241. Because Judge Fisher had retired, the petition was considered by Judge Burrowes, who denied rehearing on October 3, 1983.

The present appeal was received by the Board on November 8, 1983. Briefs on appeal were filed by both parties. In addition, the Board requested briefing by the Office of the Solicitor, U.S. Department of the Interior, on the question of recognition of resulting purchase money trusts in Indian trust property. The Solicitor's brief was received on September 28, 1984. Both parties filed responses to the Solicitor's brief.

### Discussion and Conclusions

On appeal, appellant raises the same two issues that were raised before Judge Fisher. First, appellant argues that she should have been awarded a monthly support payment of \$150. Second, appellant contends that, except for the quarter section that constituted decedent's original allotment, she is entitled to a one-half interest in all of the trust property in decedent's estate because the property was acquired through their joint efforts.

[1] In order to prevail on her first claim, appellant must show that decedent's obligation to make a monthly support payment to her survived his death. The Board follows the general rule in domestic relations cases that the law of the jurisdiction in which a relationship was created governs the rights and obligations arising from the relationship. Cf. Estate of Henry Frank Racine, 13 IBIA 69 (1985); Estate of Richard Doyle Two Bulls, 11 IBIA 77 (1983). Thus, if no other jurisdiction is involved, the law of the jurisdiction granting a divorce or separate maintenance determines whether alimony or support payments survive the payor's death. This question then normally will be decided by state or tribal law.

Here, support payments were ordered by the South Dakota courts. In Tyler v. Tyler, 233 N.W.2d 804, 805 (S.D. 1975), the South Dakota Supreme Court upheld a lower court decision "granting alimony of \$400 per month for plaintiff's lifetime unless she remarried , which shall be an obligation or charge against appellant's estate." In a footnote, the Court cited 24 Am.Jur.2d, Divorce and Separation, § 642, in finding that "[n]o issue is raised regarding termination of alimony upon the death of the husband. In other states there is a difference of opinion." No more recent South Dakota case discussing this issue has been found.

In considering the law of the State of South Dakota, the Board notes that if alimony or separate maintenance payments normally survived the death of the payor in that jurisdiction, it would not be necessary for the courts to include a survival of the cause of action clause in the order requiring payments. The Board concludes, therefore, that in South Dakota, alimony or separate maintenance payments will survive the payor's death only when so stated in the decree, as in Tyler, supra.

The Board has reviewed the two court orders requiring support payments by decedent in this case. The 1972 order initially establishing payments concerned temporary support pending the completion of the divorce proceedings. The 1974 order dismissed a complaint for non-support against decedent on his representation that he would continue the payments. Because there is no evidence in either order that the court intended to make these payments an obligation against decedent's estate, we hold that appellant is not entitled to payment from the estate.

The second question raised in this appeal is whether a portion of decedent's Indian trust estate should be found to constitute the separate property of appellant under a resulting purchase money trust theory. Appellant asserts that decedent would not have acquired this property without her efforts, and that the property was placed in decedent's name for the sole reason that it would thus have the status of Indian trust land. In his August 4, 1983, order, Judge Fisher found that he did not have jurisdiction to determine whether this property was improperly listed by BIA as an asset of decedent's estate. Alternatively, in the event that the Board determined he did have jurisdiction, Judge Fisher found appellant's claim to be without merit.

The Board first considers Judge Fisher's conclusion that he lacked authority to determine appellant's claim. In response to the Board's June 21, 1984, order, the Solicitor filed a brief on the issue of the recognition of resulting purchase money trusts in Indian trust property. That brief notes that although such trusts have not been specifically addressed before, <sup>1/</sup> there appears to be no reason why they should not be recognized under appropriate circumstances. The brief further states that Administrative Law Judges are better equipped than BIA officials to consider the mixed questions of fact and law involved in the recognition of such resulting trusts. The Solicitor

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<sup>1/</sup> In the Estate of Jack R. Yellow Bird or Steele, IP BI 600B 80, IP BI 549C 78, Administrative Law Judge Daniel S. Boos found that the decedent's surviving Indian spouse owned a one-half (1/2) interest in lands held in the decedent's name. Although Judge Boos found "that without the money [the surviving spouse deposited] in the personal [bank] account to sustain the day-to-day living of the family there would have been little, if any, money in the ranch account available for land purchase," he characterized the interest of the surviving spouse as a joint tenancy rather than a resulting purchase money trust. Estate of Yellow Bird, order of Aug. 22, 1980, at 2-3.

believes that 43 CFR 4.273(a) 2/ provides sufficient authority for Administrative Law Judges to consider this type of question in the context of a probate proceeding. At present, section 4.273, dealing with improperly included property, and its related provision, section 4.272, dealing with omitted property, are primarily employed as remedies for administrative errors discovered after the conclusion of a probate proceeding.

Under 43 CFR 4.1(b)(2) and 4.330, the Board has authority to review administrative decisions of BIA officials made under 25 CFR Chapter I. Maintaining title records to Indian trust property is an administrative responsibility assigned to BIA under 25 CFR Part 150. Therefore, questions arising from the maintenance of such records can be reviewed by the Board.

The customary administrative appeal process is set forth in 25 CFR Part 2: The agency Superintendent undertakes an action or issues a decision which is then subject to an appeal to the Area Director, whose decision in turn is subject to an appeal to the Deputy Assistant Secretary-- Indian Affairs (Operations), 3/ whose decision may then be reviewed by the Board of Indian Appeals. If the Board determines that there is a genuine dispute of material fact, under 43 CFR 4.337(a) it can refer the matter to an Administrative Law Judge for an evidentiary hearing and recommended decision. Under 43 CFR 4.202 the Indian Probate Administrative Law Judges have authority to "hold

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2/ Section 4.273(a) states:

"When subsequent to a decision under § 4.240 or § 4.296, it is found that property has been improperly included in the inventory of an estate, the inventory shall be modified to eliminate such property. A petition for modification may be filed by the Superintendent of the Agency where the property is located, or by any party in interest."

3/ The administrative review functions of the vacant office of Commissioner of Indian Affairs were assigned to the Deputy Assistant Secretary by memorandum of May 15, 1981, signed by the Assistant Secretary for Indian Affairs.



hearings and issue recommended decisions in matters referred to them by the Board in the Board's consideration of appeals from administrative actions of the Bureau of Indian Affairs."

The Board recently followed this procedure in the Estate of Stella Valandry Williams, 13 IBIA 35 (1984), on reconsideration, 13 IBIA 46 (1984). In Williams the Administrative Law Judge held a probate hearing in which the estate inventory was challenged. The Judge held that he had no jurisdiction to consider that challenge. This order was appealed to the Board, which referred the case to BIA for an analysis of the title status by the agency Superintendent. The Board noted that any appeal from the Superintendent's decision was subject to review by the Area Director and Deputy Assistant Secretary under the procedure established in 25 CFR Part 2. Although Williams was recently resolved through settlement, it was quite possible that after review by the Deputy Assistant Secretary, the Board might still have been required to refer the matter for an evidentiary hearing. Estate of Stella Valandry Williams, 13 IBIA 148 (1985). Obviously, this procedure results in an extremely protracted, confusing, and convoluted proceeding.

[2] Procedurally, in light of the Solicitor's position that Administrative Law Judges are better equipped than BIA officials to decide this type of issue, the Department's trust responsibility to those Indians who are involved in disputes over a decedent's trust estate, and the general rule encouraging the conservation of judicial resources, the Board holds that the existing regulations suffice to allow consideration of alleged legal errors

in BIA's inventory of estate assets during a probate proceeding. <sup>4/</sup> Because it is inconceivable that a challenge to an estate inventory would not involve a genuine question of material fact, the Board hereby issues a standing order under 43 CFR 4.337(a) routinely referring to the Administrative Law Judge handling an Indian probate proceeding any question concerning equitable title to the assets listed in the inventory of a decedent's trust estate prepared by BIA, whenever that issue is raised while the case is pending before the Administrative Law Judge.

In accordance with 43 CFR 4.311(c), BIA is an interested party in any case challenging an estate inventory. The Administrative Law Judge shall inform the appropriate agency Superintendent, Area Director, and the Deputy Assistant Secretary--Indian Affairs (Operations) of the fact that a dispute over an estate inventory has arisen, in order to allow full consideration of the issue and participation in the case by the BIA officials listed in 25 CFR Part 2. The Administrative Law Judge shall take evidence concerning the trust inventory during the regular hearing or hearings held in the estate and shall include in the order concluding the probate proceeding a recommended decision on the disputed issues raised concerning the inventory.

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<sup>4/</sup> The procedure subsequently established in this opinion is not intended to interfere with the procedures under 25 CFR Part 150 and 43 CFR 4.336 and 4.337 under which modifications to a decedent's estate may be made by BIA and/or the Administrative Law Judges in the event of administrative errors. The procedure established here applies only in those probate cases in which a legal claim is made by a person or persons to trust property titled to another person. The claim may be either that trust property titled to the decedent should have been titled to another, or that trust property titled to another should have been titled to the decedent.

<sup>5/</sup> In order to further ensure that the Deputy Assistant Secretary is aware of this decision and procedure, a copy is being sent to him. Should he have any objection to this procedure, the Board will entertain a petition for reconsideration from the Deputy Assistant Secretary, filed in accordance with the provisions of 43 CFR 4.315.

If any party objects to the recommended decision, in accordance with 43 CFR 4.310(d)(1) the 30-day period for filing exceptions to the recommended decision, set forth in 43 CFR 4.339, and the requirement for the submission of the record to the Board, set forth in 43 CFR 4.338(a), are extended to coincide with the time for filing a notice of appeal with the Board under the procedures established in 43 CFR 4.241 and 4.320. The effect of this extension is that exceptions to the recommended decision will be treated in the same manner as objections to the order determining heirs and approving or disapproving a will. If no party objects to the recommended decision, that decision shall constitute the decision of the Board under 43 CFR 4.340.

[3] Judge Fisher alternatively found appellant's claim to a purchase money resulting trust was without merit. The Board has carefully considered arguments for and against the recognition of resulting purchase money trusts in Indian trust land. Indian trust status is a unique concept in property law, and is intended for the benefit of Native Americans. In some cases, however, such as through marriage, non-Indians may indirectly benefit from the special advantages of this form of property ownership. As Judge Fisher noted in his order approving will, at page 2, appellant "cannot claim a trust relationship with the United States, nor claim an obligation flowing from the United States to administer her claimed interest in the lands \* \* \* [Furthermore,] the United States is not shown by the evidence to be a party to the transaction and there is no evidence of any consent by the government to hold any interest for the benefit of [appellant]." Under the circumstances presented here, the Federal Government owes no trust responsibility to, and cannot hold an interest in land in trust for, appellant. Bailess v. Paukune, 344 U.S. 171 (1952); Chemah v. Fodder, 259 F. Supp. 910 (W.D. Okla. 1966);

Estate of Louise Amiotte Lajtay, 12 IBIA 229 (1984); Estate of Dana A. Knight, 9 IBIA 82, 88 I.D. 987 (1981). For these reasons, the Board concludes that a resulting purchase money trust in Indian trust land cannot be claimed by persons to whom the Federal Government owes no trust responsibility.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the October 3, 1983, order of Administrative Law Judge Keith L. Burrowes is affirmed.

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//original signed  
Jerry Muskrat  
Administrative Judge

We concur:

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//original signed  
Bernard V. Parrette  
Chief Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge